The Attorney General of Texas

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Mr. John M. Knight
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P. O. Box 358
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Open Records Decision No. 339

Re: Law enforcement records relating to aggravated sexual abuse

Dear Mr. Knight:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of law enforcement records related to sexual abuse.

The records at issue here concern an alleged incident of aggravated sexual abuse which occurred in Plano on June 17, 1982. You state that the incident "is currently and for the forseeable future will continue to be actively investigated by the Plano Police Department, possibly resulting in a criminal trial." You suggest that the records are excepted from disclosure by sections 3(a)(3), 3(a)(8) and 3(a)(11) of the Open Records Act. We will first address the applicability of section 3(a)(8).

Since the incident is still under investigation, the principles relating to closed law enforcement files, Open Records Decision Nos. 252 (1980); 216 (1978), are not applicable here. As a result, the only information available under section 3(a)(8) is that held disclosable in Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Basically, the only such information required to be disclosed is that which appears on the front page of an offense report:

offense committed
location of crime
identification and description of complainant
premises involved
time of occurrence
property involved
vehicle involved
description of weather
detailed description of offense
names of investigating officers

Open Records Decision No. 127 (1976).

The court of civil appeals in the Houston Chronicle case held that the press and public have a "constitutionally protected right" to the front page of an offense report. The supreme court, in its refusal to grant a writ due to no reversible error, specifically reserved the question of "whether the press and public have a statutory or constitutional right to obtain" this information. 536 S.W.2d at 561. The decision of the court of civil appeals fails to cite relevant authority for its finding of a "constitutionally protected right" to the front page of an offense report; the United States Supreme Court has never recognized such a right; and no open records decision since the Houston Chronicle case has relied on such a right. We believe that the Supreme Court of Texas cast considerable doubt upon the judgment of the court of civil appeals that such a constitutional right exists. We have concluded that questions concerning the disclosure under the Open Records Act of particular offense report information must depend upon the provisions of the act itself rather than upon an asserted constitutional "right to know." Thus, while the decision of the court of civil appeals in Houston Chronicle may furnish some guidance we do not regard it as providing a "right to know" issue.

In the present instance, we believe that much of this information may be withheld under section 3(a)(1), as "information deemed confidential by law," in this case, common law privacy. A common law right of privacy will ordinarily exist in any information which contains highly intimate or embarrassing facts about a person, the disclosure of which would be "highly objectionable to a person of ordinary sensibilities," and, in addition, is of no legitimate concern to the public. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 678-81 (Tex. 1976). In Open Records Decision No. 262 (1980), we said that medical information might raise a claim of common law privacy if it relates to a "drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/ seizures or emotional/mental distress." It is clear that a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy. See Open Records Decision Nos. 260, 237 (1980).

In instances of serious sexual assualt, the appellate courts sometimes shield a victim by referring to her only by her initials. See King v. State, 631 S.W.2d 486, 488 (n.3) (Tex. Crim. App. 1982). In our opinion, common law privacy permits the withholding of the name of every victim of a serious sexual offense. See Open Records Decision No. 205 (1978). The mere fact that a person has been the object of a rape or attempted rape does, we believe, reveal "highly intimate or embarrassing facts" about the victim, and, in our view, disclosure of this fact would be "highly objectionable to a person of

ordinary sensibilities." Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim. See Open Records Decision No. 181 (1977). Thus, in our opinion, the only information which need be disclosed in this case is:

offense committed
time of occurrence
description of weather
name of investigating officers

When the file on this matter is closed, either by prosecution or by administrative decision, other information may become available. See Open Records Decision Nos. 252 (1980); 216 (1978). As to your claims under section 3(a)(3) and 3(a)(11), such exceptions would not provide a basis for withholding any information not already excepted by sections 3(a)(1) and 3(a)(8).

Very truly yours,

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